

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
AUSTIN C. SCHLICK
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV

1301 K STREET, N.W.
SUITE 1000 WEST
WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE:
(202) 326-7999

1 COMMERCE SQUARE
2005 MARKET STREET
SUITE 2340
PHILADELPHIA, PA 19103
(215) 864-7270
FACSIMILE: (215) 864-7280

February 26, 1999

RECEIVED

FEB 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

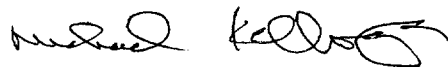
In re Matter of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act
of 1996, **CC Docket No. 96-128**

Dear Ms. Salas:

Please find enclosed for filing an original and five copies
of the Petition for Clarification in the above-captioned
proceeding.

Please date-stamp and return the extra copy provided to the
individual delivering this package.

Sincerely,



Michael K. Kellogg

Enclosures

No. of Copies rec'd 075
List ABOVE

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED
FEB 26 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the)	
Telecommunications Act of 1996)	

PETITION FOR CLARIFICATION

INTRODUCTION

The RBOC/GTE/SNET Payphone Coalition (the "Coalition") hereby requests that the Commission clarify, on a going-forward basis, which interexchange carrier is the party responsible for payment of per-call compensation when a dial-around or subscriber call is made from a payphone.¹ The Commission's effort to assign this obligation based on whether the interexchange carrier is "facilities-based" or owns or leases "switching capability" has led to disagreements among PSPs and IXC's, and has encouraged some IXC's to shirk their payment responsibilities. This has in turn contributed to a serious shortfall in payments of per-call compensation.

As the Coalition explained in its letter of November 17, 1998, under the Commission's current rules, the owner of the "first switch" to which a compensable call is routed from the local network serving the PSP is liable for per-call compensation unless some other carrier expressly identifies itself to the PSP as having the obligation and actually undertakes to pay per-call

¹In its Third Report and Order, the Commission encouraged parties to file for clarification regarding the entity that is required to pay per-call compensation. Third Report and Order, and Order on Reconsideration of the Second Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, FCC 99-7, ¶ 162 (rel. Feb. 4, 1999).

compensation on those calls. As this rule is better enforced, it will go some distance towards reducing the shortfall in compensation. On a going-forward basis, however, the Coalition believes that the best way to reduce the shortfall would be to place the obligation for payment of per-call compensation on the entity identified by the Carrier Identification Code ("CIC") used to route the compensable call from the Local Exchange Carrier's network. The use of the CIC to identify the party responsible for payment of per-call compensation is the most efficient way to ensure that the party responsible for compensation is aware of its obligations, and to facilitate the reconciliation of payment obligations between PSPs and IXC's. The Coalition therefore requests that the Commission seek comment on this proposal and quickly issue a ruling to implement it.²

DISCUSSION

The current per-call compensation regime shortchanges PSPs because it is based on the assumption — an assumption that no party can defend — that PSPs collect 100 percent of the per-call compensation due to them from IXC's. Yet as the Coalition has emphasized in prior submissions in this docket, Coalition members have found that the amount of compensation received from some of the major interexchange carriers has been from 20 to more than 50 percent less than the amount that Coalition members expected, based on their own records. In the case of many smaller IXC's, the shortfall has been even more dramatic — up to 100 percent of expected compensation. Many factors contribute to this shortfall. Two of the more significant problems

²The Coalition believes that the Commission may reinterpret its existing rules on a prospective basis without engaging in a full rulemaking. The Commission should read the phrase "every carrier to whom a completed call from a payphone is routed" in its current rules to mean the CIC assignee, thus "terminating a controversy." See 47 C.F.R. § 1.2. To the extent that the Commission believes that this prospective clarification would amount to the "amendment" of a rule or regulation, however, the Coalition requests that the Commission treat this Petition as a Petition for rulemaking under section 1.401 of the Commission's rules. See 47 C.F.R. § 1.401.

have been disputes over the assignment of per-call compensation obligations, and the unwillingness or inability of IXC's to provide detailed accounting of the calls for which they are paying compensation.

Section 64.1300(a) of the Commission's Rules requires that "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider" 47 C.F.R. § 64.1300(a). When a compensable call from a payphone is carried by more than one IXC, however, there have been disagreements among PSPs and IXC's over which of the carriers is responsible for payment of compensation. In the Coalition's view, because the rules require the carrier to whom a completed call is routed to pay compensation, and because the Commission has made clear that this duty generally applies to facilities-based carriers, the owner of the first switch is responsible for per-call compensation — unless (as the Commission and the Bureau have held) a facilities-based reseller affirmatively identifies itself to the PSP as responsible for the payment of compensation and actually undertakes to pay per-call compensation on those calls.³

This division of responsibilities between facilities-based carriers and facilities-based resellers has significant drawbacks. As an initial matter, the Commission has never determined what sort of "facilities" a reseller must own or lease in order to be able to relieve an underlying carrier of payment obligations. Moreover, although Coalition members and major IXC's have worked together in an effort to improve call tracking and reconciliation, those efforts have proved inadequate. The fundamental problem is that IXC's have claimed that their systems are not designed to provide the level of call detail that would permit reconciliation of the calls sent to their switches and the calls for which they have paid. Instead, the IXC's have only reported on the

³The Coalition's position was set forth in its ex parte letter of November 17, 1998.

number of calls for which they have paid — they have not (and reportedly cannot) account for calls that they pass on to switch-based resellers. Many IXCs appear to have used this situation as a pretext for evading their payment responsibilities. The proof of this is the dramatic shortfall in compensation payments.

The fundamental weakness of the Commission's distinctions — among facilities-based carriers and switch-based and non-switch-based resellers — is that those distinctions do not correspond to the way in which calls are routed and tracked within the telephone network. To improve the efficiency of the per-call compensation mechanism, therefore, the Commission should rely on existing network structures to assign payment obligations. Specifically, the Commission should require the carrier identified by the CIC associated with the compensable call to pay per-call compensation for that call.

The very purpose of Carrier Identification Codes is to provide routing and billing information for calls from end users via trunk-side connections to IXCs. The CIC identifies a trunk to which the call is physically routed. When, for example, a subscriber 800 call is originated on the local exchange network, the local exchange carrier must perform a database look-up to know where to route the call. That information is provided by the CIC. For each 800 call routed from the local exchange network, there is an associated CIC which the LEC uses for billing purposes. Notably, for each call, the CIC is unique.

The advantages of assigning the obligation for payment of per-call compensation to the assignee of the CIC are clear. There is one and only one CIC assigned to each call from a payphone, so the CIC assignee is unique. Moreover, the CIC is already used to bill charges for access to the local network; it makes sense also to use the CIC to assign responsibility for

payment of access to payphones. Third, by adopting this "CIC" solution, the Commission builds on existing network structures: the CIC associated with the call will identify the party with the payment obligation.

In responding to the Coalition's earlier suggestion that the Commission assign responsibility for payment of per-call compensation to the CIC assignee, Sprint raised two questions.⁴ First, Sprint noted that some CICs are assigned to resellers that are not facilities based. That is true (and the Coalition has never suggested otherwise), but it does not provide a reason not to require those carriers to bear responsibility for per-call compensation. The CIC instructs the LEC's switch to route a call to a particular trunk, which in turn carries the call to a particular switch. In most cases, the switch owner is also the CIC assignee; in other cases, the CIC assignee is necessarily in a contractual relationship with the owner of that switch, and can arrange with the switch owner to perform the per-call compensation tracking function for it, just as the switch owner already performs other call routing and tracking functions. It is no more untoward to require the CIC assignee to bear responsibility for per-call compensation than it is to use the CIC for the purpose of billing access charges.⁵

Second, Sprint suggests that assigning per-call compensation responsibilities to the CIC assignee might discourage carriers from obtaining their own CICs. This amounts to a prediction that the tail will wag the dog: the demand for CICs has been rapidly accelerating, and the

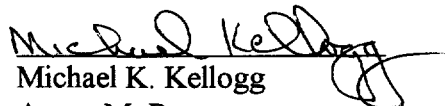
⁴See Letter of Richard Juhnke to Lawrence E. Strickling, CC Docket 96-128, at 6 (filed Dec. 4, 1998).

⁵Sprint notes that some resellers have CICs that are not activated nationwide. That observation is irrelevant, for those resellers would only have responsibility for calls actually routed to their CICs.

assignment of per-call compensation obligations is hardly likely to affect this trend. Moreover, to the extent that it would be desirable to require resellers to obtain their own CICs, that issue may be addressed directly; it hardly provides a reason to forego a solution to the per-call compensation problem.

As Sprint acknowledges, it is in no party's legitimate interest for per-call compensation obligations to go unpaid. The Coalition believes that the CIC code solution is both efficient and fair, and will go some distance to reducing the weight of unpaid compensation obligations on the per-call compensation system. The Commission should promptly seek comment on this proposal and move to implement it as soon as possible.

Respectfully submitted,

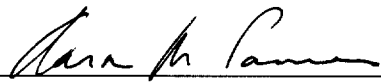

Michael K. Kellogg
Aaron M. Panner
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

Counsel for the RBOC/GTE/SNET
Payphone Coalition

February 26, 1999

CERTIFICATE OF SERVICE

I, Aaron M. Panner, hereby certify that on the 26th day of February, 1999, I caused copies of the foregoing Petition For Clarification to be served upon the parties on the attached service list by first-class mail or, where indicated by asterisk, by hand delivery.



Aaron M. Panner

FEDERAL COMMUNICATIONS COMMISSION
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128, Second Report and Order

SERVICE LIST

Federal Communications Commission*	Dorthey T. Atwood Glenn Reynolds Mark Seifert Common Carrier Bureau Stop 1600A, Room 6008 Federal Communications Commission 2025 M Street, N.W. Washington, DC 20554
Federal Communications Commission*	Lawrence E. Strickling Common Carrier Bureau Federal Communications Commission 1919 M Street, NW, Room 500 Washington, DC 20554
International Transcription Service	ITS 1231 20th Street, N.W. Washington, DC 20036
America's Carriers Telecommunications Association	Charles H. Helein Helein & Associates, P.C. 8180 Greensboro Drive, Suite 700 McLean, VA 22102
American Public Communications Council	Albert H. Kramer Robert F. Aldrich Dickstein, Shapiro, Morin & Oshinsky, L.L.P. 2101 L Street, N.W. Washington, DC 20037-1526
AT&T	Mark C. Rosenblum Richard H. Rubin Jodie Donovan-May AT&T 295 North Maple Avenue Room 3252I3 Basking Ridge, NJ 07920
Cable & Wireless, Inc.	Rachel J. Rothstein Cable & Wireless, Inc. 8219 Leesburg Pike Vienna, VA 22182

Communications Central Inc.

Barry E. Selvidge
Communications Central Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, GA 30076

Competitive Telecommunications Association

Danny E. Adams
Steven A. Augustino
Kelley, Drye, & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Competitive Telecommunications Association

Genevieve Morelli
Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, DC 20036

Excel Telecommunications, Inc.

Dana Frix
Pamela S. Arluk
Swidler & Berlin, Chtd.
3000 K Street, N.W, Suite 300
Washington, DC 20007

Frontier Corporation

Michael Shortley
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

General Communication Inc.

Kathy L. Shobert
General Communication Inc.
901 15th Street, N.W., Suite 900
Washington, DC 20005

International Telecard Association

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, DC 20036

LCI International Telecom Corp.

Danny E. Adams
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

MCI WorldCom, Inc.

Mary J. Sisak
Mary L. Brown
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Midcom Communications Inc.

Steven P. Goldman
Bradley D. Toney
Midcom Communications Inc.
1111 Third Avenue, Suite 1600
Seattle, WA 98101

Midcom Communications Inc.

Laura H. Phillips
Loretta J. Garcia
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036-6802

Oncor Communications, Inc.

Mitchell F. Brecher
Fleischman and Walsh, LLP
1400 16th Street NW
Washington, DC 20036

Peoples Telephone Company, Inc.

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue NW, Suite 1300
Washington, DC 20004

Peoples Telephone Company, Inc.

Bruce W. Renard
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

RCN Telecom Services, Inc.

Dana Frix
William B. Wilhelm, Jr.
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, DC 20007

Sprint Corporation

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, DC 20036

Telaleasing Enterprises, Inc.

Theodore C. Rammelkamp, Jr.
Telaleasing Enterprises, Inc.
601 West Morgan
Jacksonville, IL 62650

Telecommunications Resellers
Association

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006

Teleport Communications Group Inc.

Teresa Marrero
Teleport Communications Group Inc.
Two Teleport Drive
Staten Island, NY 10311

United States Telephone Association

Mary McDermott
Linda Kent
Keith Townsend
Lawrence Sarjeant
USTA
1401 H Street, N.W., Suite 600
Washington, DC 20005

February 26, 1999